



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

WALTER COLE MCNAIR, JR.
Plaintiff,

vs.

JON OZMINT, et al.,
Defendants.

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CIVIL ACTION NO. 3:08-3117-HFF-JRM

ORDER

This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting, based upon Plaintiff's motion, that the case be dismissed without prejudice pursuant to Fed. R Civ. P. 41(a)(1). The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 12, 2009, but Defendant failed to file any objections to the Report. In the absence of such objections, the Court is not required to give any

explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

On February 10, 2009, Plaintiff filed a motion for voluntary dismissal of this action without prejudice. Based upon that motion and because Plaintiff is proceeding pro se, the Magistrate Judge filed the Report, recommending that the action be voluntarily dismissed pursuant to Rule 41(a). On March 3, 2009, after the time for filing objections to the Report had run, Defendants filed an answer. No counterclaims were asserted in that answer. Therefore, the Court may still voluntarily dismiss this action without running afoul of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 41(a)(2) (noting that action may be dismissed by court order so long as existing counterclaims are allowed to proceed in separate action.).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court that Plaintiff's motion for voluntary dismissal is **GRANTED**. The action is **DISMISSED** *without prejudice* pursuant to Fed. R. Civ. P. 41(a). In light of this, Plaintiff's pending motion for preliminary injunction is **MOOT**.

IT IS SO ORDERED.

Signed this 24th day of March, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.